

Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 IO-13 CIAE-00 DODE-00 PM-05 H-01
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FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 9434

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 4263

E. O. 11652: GDS

TAGS: SHUM, PGOV, PINT, CI

SUBJECT: HUMAN RIGHTS AND CHILEAN LEGAL/JUDICIAL SYSTEM

REFS: (A) STATE 136322, (B) SANTIAGO 3032

1. REFTEL (A) REQUESTS (1) CLARIFICATION OF LANGUAGE AND COVERAGE OF GOC'S AMNESTY DECREE OF APRIL 18, (2) ASSESSMENT OF THE PRESENT OPERATION OF THE CHILEAN LEGAL AND JUDICIAL SYSTEM AS IT APPLIES TO INTERNAL SECURITYCASES, AND (3) EVALUATION OF GOC POLICY IN PERMITTING EXILES, BENEFITTED BY AMNESTY, TO RETURN TO CHILE. THIS MESSAGE PROVIDES A RESPONSE TO THE FIRST ELEMENT OF REQUEST. SECOND AND THRID ELEMENTS BY SEPTTEL.

2. WE ARE POUCHING TO ARA/AND/CH JUNE 2 COPY OF THE "DIARIO OFICIAL" OF APRIL 19 CONTAINING THE OFFICIAL TEXT OF DECREE LAW 2191 OF APRIL 18. WE ARE INCLUDING AS THE FINAL PART OF THIS MESSAGE THE EMBASSY'S INFORMAL TRANSLATION OF ENTIRE TEXT.

3. SPANISH TEXT OF ARTICLE 3, AS PARTIALLY QUOTED IN PARA 2 OF REFTEL (A) APPEARS TO BE IDENTICAL WITH TEXT FROM "DIARIO OFICIAL." WE NORMALLY WOULD HAVE NO REASON TO DOUBT THAT CHILEAN EMBASSY WASHINGTON'S NOTE NO. 98 OF APRIL 20 DID IN FACT TRANSMIT FULL AND CORRECT SPANISH TEXT. THE FOREIGN MINISTRY HERE SENT A COPY OF THE TEXT, UNDER A CIRCULAR NOTE OF THE SAME DATE, CONFIDENTIAL

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TO ALL LOCAL EMBASSIES. HOWEVER THERE ARE TWO POINTS OF UNCERTAINTY. FIRST, NEITHER IN THE "DIARIO OFICIAL" NOR ANY OTHER TEXT WE HAVE SEEN IS THERE A PARAGRAPH C OF DL 2191. SECOND, OPERATIVE PARAGRAPH 4 OF THE DECREE DOES NOT REFER TO THE LETELIER CASE BY NAME BUT RATHER AS "PROCESO ROL NO. 192-78 DE JUZGADO MILITAR DE SANTIAGO, FISCALIA AD HOC."

4. IN DISCUSSION SWITH FOREIGN MINISTRY OFFICIALS WE HAVE NOT BEEN ABLE TO LOCATE THE ENGLISH TRANSLATION OF DL 2191 PROVIDED BY THE CHILEAN UN MISSION. NOR DID THIS EMBASSY RECEIVE ATTACHMENTS TO USUN A-310 OF MAY 1. THE MINISTRY'S HUMAN RIGHTS OFFICE KNOWS OF NO SUCH TRANSLATION, SAYING THAT THE GOC UN DELEGATION MAY HAVE PROVIDED AN INFORMAL TRANSLATION ON ITS OWN.

5. WE HAVE DISCUSSED WITH FOREIGN MINISTRY LEGAL ADVISOR HERNAN RIOS HIS REPORTED STATEMENTS TO ASSISTANT SECRETARY DERIAN. REGARDING HIS DENIAL THAT THE AMNESTY EXTENDED TO SECURITY PERSONNEL CONVICTED OF ABDUCTION, HOMICIDE ORBOBDILY HARM AGAINST PRISONERS, RIOS EMPHASIZED THAT HE WAS REFERRING TO THOSE CASES STILL IN A TRIAL STATUS OR FOR WHICH A PERSON HAD BEEN SENTENCED BY A CIVILIAN COURT, AS STIPULATED IN ARTICLE 1. ALL PERSONS CONVICTED BY A MILITARY COURT (ARTICLE 2) AS WELL AS ALL PERSONS NOT CONVICTED OR IN TRIAL PROCESS IN CIVILIAN COURTS (EXCEPT FOR THE CRIMES SPECIFICALLY EXEMPTED IN ARTICLE 3) ARE, RIOS AGREED, COVERED BY THE AMNESTY. ON HIS STATEMENT THAT NO COMMON CRIMES WERE COVERED BY THE AMNESTY, RIOS SAID THAT HE MEANT TO SAY THAT PERSONS COMMITTING THOSE SPECIFIC CRIMES MENTIONED IN ARTICLE 3 WILL NOT BE ELIGIBLE FOR THE AMNESTY. THE REMARKS MADE MAY 3, RIOS CONCLUDED SOMEWHAT LAMELY, WERE PART OF AN INFORMAL DISCUSSION AND WERE NOT MEANT TO BE AN IN-DEPTH BRIEFING ON THE DECREE'S PROVISIONS.

6. IN SUMMARY, THE AMNESTY AS DECREED BY DL 2191 DOES APPLY
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TO CRIMES SUCH AS HOMICIDE, KIDNAPPING OF AN ADULT, AND TORTURE, WHETHER COMMITTED BY A MEMBER OF THE SECURITY FORCES OR ANYONE ELSE -- UNLESS THE PERSONS WAS CONVICTED BY A CIVILIAN COURT OR IN TRIAL STATUS AS OF APRIL 18. ON THE OTHER POINT AT ISSUE, WHILE THE LETELIER CASE IS NOT REFERRED TO BY NAME, IT IS VERY CLEARLY REFERRED TO BY NUMBER IN ARTICLE 4 OF DL 2191.

7. EMBASSY TRANSLATION OF AMNESTY DECREE: QUOTE:

NUMBER 2,191. SANTIAGO, APRIL 18, 1978. IN LIGHT OF THE PROVISIONS OF DECREE LAWS NOS. 1 AND 128 OF 1973, AND 527, OF 1974, AND CONSIDERING:

1ST - THE GENERAL TRANQUILITY, PEACE AND ORDER THAT THE COUNTRY IS PRESENTLY ENJOYING, TO THE EXTENT THAT INTERNAL DISRUPTIONS HAVE BEEN OVERCOME, PERMITTING THE ENDING OF THE STATE OF SIEGE AND CURFEW IN ALL THE NATIONAL TERRITORY;

2ND. - THE ETHICAL IMPERATIVE THAT REQUIRES CARRYING OUT ALL POSSIBLE EFFORTS TO STRENGTHEN THE TIES THAT BIND THE CHILEAN NATION, LEAVING BEHIND HATREDS WHICH NO LONGER SERVE ANY PURPOSE, AND PROMOTING ALL INITIATIVES THAT CONSOLIDATE THE REUNIFICATION OF CHILEANS;

3RD. - THE NECESSITY FOR STRONG NATIONAL UNITY THAT SUPPORTS

PROGRESS TOWARD THE NEW INSTITUTIONALITY WHICH SHOULD GUIDE THE
DESTINY OF CHILE.

THE GOVERNING JUNTA HAS AGREED TO ISSUE THE FOLLOWING DECREE
LAW:

ARTICLE 1. - AMNESTY IS GRANTED TO ALL PERSONS WHO, AS
PRINCIPALS, ACCOMPLICES OR ACCESSORIES HAVE ENGAGED IN CRIMINAL
DEEDS, DURING THE PERIOD OF THE STATE OF SIEGE, BETWEEN SEPTEMBER
11, 1973 AND MARCH 10, 1978, PROVIDED THAT THEY ARE NOT PRESENTLY
BEING TRIED OR HAVE BEEN SENTENCED.

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C O N F I D E N T I A L SECTION 2 OF 2 SANTIAGO 4263

ARTICLE 2. AMNESTY IS GRANTED ALSO TO THOSE PERSONS
WHO, AS OF THE EFFECTIVE DATE OF THIS DECREE LAW, ARE SERVING
SENTENCES HANDED DOWN BY MILITARY TRIBUNALS AFTER SEPTEMBER 11, 1973.

ARTICLE 3. - NOT INCLUDED IN THE EMNESTY REFERRED TO IN
ARTICLE 1 ARE PERSONS WHO HAVE COMMITTED THE CRIMES OF PARRICIDE,
INFANTICIDE, ROBBERY WITH THE USE OR THREAT OF VIOLENCE,
PREPARATION OR TRAFFICKING IN DRUGS, KIDNAPPING OF MINORS, ARSON
AND OTHER CRIMES OF PHYSICAL DESTRUCTION; RAPE, STATUTORY RAPE,
INCEST, DRIVING WHILE IN A STATE OF INTOXICATION, EMBEZZLEMENT
OF PUBLIC FUNDS, FRAUD OR ILLEGAL EXACTIONS, SEINDLES AND OTHER
DECEPTIONS, MINOR SEXUAL CRIMES, CRIMES FORESEEN IN DECREE
LAW NO. 280 OF 1974, AND ITS LATER MODIFICATIONS; BRIBERY,
CUSTOMS SMUGGLING FRAUD AND CRIMES SET FORTH IN THE TAX CODE.

ARTICLE 4. - NOR SHALL THEY BENEFIT FROM ARTICLE 1 THOSE
PERSONS APPEARING TO BE RESPONSIBLE, AS AUTHORS, ACCOMPLICES
OR ACCESSORIES TO THE CRIME, OF THE DEEDS BEING INVESTIGATED
UNDER PROCEEDINGS NO. 192-78 OF THE MILITARY COURT OF SANTIAGO,
OFFICE OF THE AD HOC PROSECUTOR.

ARTICLE 5. - PERSONS BENEFITTING UNDER THIS DECREE LAW,
WHO ARE OUTSIDE OF THE TERRITORY OF THE REPUBLIC, MSUT ABIDE
BY THE PROVISIONS OF ARTICLE 3 OF DECREE LAW 81, OF 1973, IN
ORDER TO RE-ENTER THE COUNTRY.

THIS IS TO BE RECORDED IN THE OFFICE OF THE COMPTROLLER
GENERAL OF THE REPUBLIC, PUBLISHED IN THE OFFICIAL GAZETTE
AND INSERTED IN THE OFFICIAL FILES OF THE COMPTROLLER GENERAL.
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/SIGNED BY MEMBERS OF THE JUNTA, AND MINISTERS OF INTERIOR AND
JUSTICE/
END QUOTE.
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